IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10109 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

ABDULRASID ABHAS SHAIKH

Appearance:

MR HARDIK C RAWAL for Petitioner

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/07/2000

ORAL JUDGEMENT

Heard learned counsel Mr. H.C. Rawal for the petitioner and learned counsel Mr. B.G. Jani for the respondent. Rule. Learned counsel Mr. B.G. Jani waives service of rule on behalf of respondent.

2. Gujarat State Road Transport Corporation (GSRTC) has filed the present petition against the respondent

Abulrasid Abhas Shaikh. The respondent was working as a driver with the petitioner Corporation. While continuing in his post as driver, the respondent remained absent without any permission from the authority for the period from 24-11-1987 to 2-1-1988. The authority sent a registered letter dated 23-12-1987 directing the respondent to report for duty and respondent received the letter on 24-12-1987 but did not report for duty. The Corporation accordingly started disciplinary proceedings against the respondent. In the disciplinary proceeding the charges have been proved by the Corporation and a show cause notice was issued to the respondent on 28-1-1988, and ultimately the authority after hearing the respondent, dismissed him from service by an order dated 17-2-1988. The respondent took up the matter with the Government who referred the dispute to the Labour Court at Surat, which registered the case as Reference (LCS) No. 238/88. The Labour Court, Surat after taking evidence both oral and documentary was satisfied that there is no illegality or error in the departmental proceedings, but the Labour Court has taken a lenient view regarding penalty imposed on the respondent, in view of the fact that the Labour Court was of the opinion that the punishment imposed was disproportionate to the offence alleged to have been committed by the respondent. Accordingly, the Labour Court by its judgment & award dated 11-2-1999 directed the Corporation to reinstate the respondent in service. Labour Court, however, restricted back wages to 50 % to the petitioner. Having felt aggrieved by the order of the Labour Court, the Corporation has filed present petition for quashing the judgment & award of the Labour Court, Surat.

3. Mr. Rawal, learned counsel appearing on behalf of the Corporation submitted that the respondent was earlier also dismissed from service for unauthorised absence by order of the competent authority dated 2-3-1984. However, he was subsequently reinstated. Mr. Rawal further submitted that, in the present case the respondent driver remained absent unauthorisedly causing disruption of services by the Corporation. Mr. Rawal consequently submitted that this unauthorised absence of the driver can not be taken lightly as his absence has caused disruption in the bus service. Learned counsel accordingly submitted that the Labour Court has committed an error in taking a lenient view in the matter of punishment. Mr. Rawal accordingly submitted that the Labour Court in its judgment & award has held that the respondent did not challenge the legality or otherwise of the proceedings, except the findings of the Inquiry Officer. The Labour Court did not interfere with the

proceedings of the Inquiry Officer, however Labour Court has taken a lenient view in the matter of penalty and directed reinstatement of the respondent with 50 % back wages. Mr. Rawal consequently submitted that, since there is no illegality in the disciplinary proceedings and in view of the fact that the respondent was earlier also dismissed from service for his unauthorised absence from duty, the Labour Court should not have interfered with the punishment imposed by the Corporation. Mr. Rawal therefore submitted that the judgment & award passed by the Labour Court should be quashed.

4. Mr. B.G. Jani, learned counsel appearing on behalf of the respondent submitted that, it is true that the respondent did not challenge the legality of the disciplinary proceedings but the Labour Court has exercised its discretion in the matter of penalty and that discretion should not be interfered with by this Court. Mr. Jani also submitted that the Labour Court has examined papers submitted by the respondent and has found from the record that the respondent has filed an application for leave supported by medical certificate. This aspect was not considered by the Corporation but has been considered by the Labour Court, and therefore has taken a lenient view in the mater of penalty imposed on the respondent.

5. I have considered submissions of learned counsel of both the sides. It appears that the respondent was earlier also dismissed for unauthorised absence by order dated 2-3-1984 passed by the Corporation and those papers were made available before the Labour Court. Since the legality of the proceedings was not challenged, I am of the opinion that the Labour Court did not examine those papers. The Labour Court had examined legality of the order of penalty and has found that the penalty is disproportionate to the offence alleged to have been committed by the respondent. The record that was available before the Labour Court is that of present absence of about 40 days from 24-11-1987 to 2-1-1988. It is evident that the Corporation issued a letter to the respondent dated 23-12-1987 directing him to report for duty, but in spite of that he did not report for duty. This has no doubt caused inconvenience and disruption in services of the Corporation and therefore I am of the view that the Labour Court has taken a too liberal view in the matter of penalty and back wages. It is not in dispute that the petitioner has already reinstated in service as per order of the Labour Court, on 11-2-1999 and he is now performing his job as driver under the Corporation. The only matter which remains to be

resolved is the back wages and also whether the penalty imposed by the Labour Court is appropriate in the facts & circumstances of the case. Considering the delay in disposal of the case the Labour Court has awarded 50 % of the back wages to the respondent. There is nothing in the evidence to show that the respondent was not lawfully engaged in other work during the period from the date of his dismissal to the date of reinstatement. No record is available to show that he was idle during the entire period. Considering the nature of offence committed by the respondent , and considering the delay in the matter of disposal of the case, I am of the view that the Labour Court should not have granted 50 % back wages to the respondent. Further drivers generally do not remain idle even if they are terminated from their post. In absence of any evidence and considering the delay and the nature of offence committed by the respondent, I am of the view, 25 % of the back wages will meet the ends of justice. Accordingly I am not interfering with the order of reinstatement passed by the Labour Court. However the payment of back wages should be restricted to 25 % only. With the aforesaid modification the present petition is partly allowed. Rule made absolute to the aforesaid extent. I make no order as to costs.

DT: 18-7-2000

(P.K. Sarkar, J)

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